

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARC VALENTINO BARRERA,

Plaintiff,

v

Case No. 19-11807
Honorable Thomas L. Ludington

MOUNT PLEASANT, CITY OF, et al

Defendants.

/

**ORDER DENYING MOTION TO SHOW CAUSE AND REJECTING STIPULATION
TO EXTEND DEADLINES**

On June 18, 2019, Plaintiff filed a complaint under Section 1983 for false arrest against Defendants City of Mount Pleasant, Isabella County, Officer Carey Murch, Officer Jeff Thompson, Officer Jacob Eggers, and Officer Christopher Cluley. ECF No. 1. Plaintiff claims that on the night in question, he was a passenger in a vehicle with three other individuals, including Morgan Guerrero. Defendant Murch stopped the vehicle and Defendant Thompson arrived soon afterwards. Murch and Thompson arrested Plaintiff and took him to the Isabella County Correctional Facility. There Defendants Eggers and Cluley searched Plaintiff and placed him in custody. Plaintiff argues that the officers arrested him without probable cause.

I.

Plaintiff filed his complaint on June 18, 2019 and the Court issued its Case Management and Scheduling Order on August 29, 2019. ECF No. 19. Discovery was scheduled to close on March 2, 2020. The Scheduling Order provides, “This Court will not order supplemental discovery to take place subsequent to the discovery cutoff date, but will reach the merits of discovery motions, including motions to compel, filed before the cutoff date.” *Id.* at PageID.136.

On February 21, 2020, Defendants served Guerrero with a subpoena to testify at a deposition on March 3, 2020, one day after discovery was scheduled to close. ECF No. 30-1. Guerrero did not appear for the deposition. More than three weeks later, Defendants filed a “Motion to Show Cause and Compel Deposition of Morgan Guerrero.” ECF No. 30. They asked the Court to order Guerrero to show cause as to why she did not appear for the deposition and to compel her to appear for a deposition.

Defendants’ motion will be denied. The scheduling order gave the parties over six months to complete discovery. Regardless, Defendants did not serve Guerrero with a subpoena until a week and half before the close of discovery and scheduled the deposition for the day after the close of discovery. The Court’s Scheduling Order stated explicitly that motions to compel were to be filed prior to the close of discovery. Instead, Defendants waited more than three weeks to file their motion to compel. Defendants’ motion will be denied due to the untimeliness of their discovery requests and motion.

II.

The parties have also filed a stipulation to extend the dispositive motion deadline for Defendants Murch and Thompson by 30 days. They represent that the extension is necessary to continue the depositions of Murch and Thompson. Defendants Murch, Thompson, and the City of Mount Pleasant claim that they “would be unfairly prejudiced if these depositions are completed after their own dispositive motion(s) are filed.”

The stipulation will be rejected. The parties have furnished no explanation as to why the continued depositions of Murch and Thompson were not completed prior to the close of discovery. As explained above, the parties were given over six months of discovery. At no point did they seek

to extend the period of recovery or file motions to compel. Their stipulation is untimely and will be rejected.

The stipulation further seek to extend to June 5 Plaintiff's response brief deadline to all dispositive motions. Defendants Isabella County, Cluley, and Eggers filed their motion for summary judgment over a week ago on March 23, 2020. ECF No. 28. Pursuant to Local Rule 7.1, Plaintiff's response brief is due April 13, 2020. The parties furnish no justification for why Plaintiff's response brief should be extended by almost two months. Additionally, they provide no reason as to why Defendants should be given two weeks to file a reply brief rather than the one week provided in Local Rule 7.1. This stipulated relief will be rejected.

The parties represent in the stipulation that they "have also confirmed with retired Magistrate Judge Mona Mazjoub's office several available dates for mediation in May 2020." They agree that they will complete facilitation by May 28, 2020. It is unclear why the parties are considering facilitation dates in May. During the March 11, 2020 settlement conference, the parties spoke with Judge Mazjoub's office. At the time, Judge Mazjoub had many available times in April because her facilitation practice had recently opened. Her office offered the parties many dates and times for facilitation.

The Court is aware that COVID-19 has disrupted many appointments. It is unknown how long and to what extent COVID-19 will continue to affect society. However, telephones and the internet provide a broad array of options to conduct facilitations remotely. The parties are encouraged to consider remote facilitation methods that do not require the physical presence of the attendees so that the case's progress is not stymied.

Accordingly, it is **ORDERED** that Defendants' "Motion to Show Cause and Compel Deposition of Morgan Guerrero" (ECF No. 30) is **DENIED**.

It is further **ORDERED** that the stipulation to extend the dispositive motion deadline is **REJECTED**. The Court's original Scheduling Orders remains intact.

Dated: March 31, 2020

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARC VALENTINO BARRERA,

Case No. 1:19-cv-11807-TLL-PTM

Plaintiff,

Hon. Thomas L. Ludington

v

CITY OF MOUNT PLEASANT, a Municipal
Corporation; ISABELLA COUNTY,
Mt. Pleasant Police Officers CAREY MURCH
and JEFF THOMPSON, and Isabella County, Corrections
Officers JACOB EGGERS and CHRISTOPHER CLULEY,
In their individual and official capacity;

Defendants.

Fieger, Fieger, Kenney & Harrington, P.C.
Geoffrey N. Fieger (P30441)
Gregory W. Wix (P65424)
Attorneys for Plaintiff
19390 W. Ten Mile Rd.
Southfield, MI 48075
(248) 355-5555
g.wix@fiegerlaw.com

Rosati, Schultz, Joppich, & Amtsuechler, P.C.
Andrew J. Brege (P71474)
Thomas D. Beindit (P81133)
Attorneys for Defendants City of Mt. Pleasant, Cary
Murch & Jeff Thompson
822 Centennial Way, Suite 270
Lansing, MI 48917
(517) 886-3800
abrege@rsjalaw.com
tbeindit@rsjalaw.com

Cummings McClorey Davis & Acho, PLC
Allan C. Vander Laan (P33893)

Bradley C. Yanalunas (P80528)
Attorney for Defendants Isabella County, Jacob Eggers
& Christopher Cluley
2851 Charlevoix Drive SE, Ste. 327
Grand Rapids, MI 49546
(616) 975-7470
avanderlaan@cmda-law.com
byanalunas@cmda-law.com

**STIPULATION AND ORDER EXTENDING DISPOSITIVE MOTION
DEADLINE AND FACILITATION**

STIPULATION

Due to the current state of emergency, and more particularly, Governor Whitmer's Executive Order No. 2020-21 (EO), the parties have been unable to complete the remaining continued depositions of Defendants Murch and Thompson, as had been discussed at the March 11, 2020 settlement conference. The parties agree that the completion of these depositions are necessary before both a successful mediation. Defendants City of Mt. Pleasant, Murch, and Thompson also assert they would be unfairly prejudiced if these depositions are completed after their own dispositive motion(s) are filed by the Court's current deadline of April 2, 2020. As the current EO lifts its stay-in-place restriction on April 13, 2020, the parties believe they should be able to complete the Much and Thompson depositions by the end of April, barring any further extension of the EO.

The parties have also confirmed with retired Magistrate Judge Mona Mazjoub's office several available dates for mediation in May 2020, with the last available date May 28.

Given the above, the Parties hereby agree and stipulate that the deadline for Defendants to file dispositive motions be extended to May 8, 2020. The Parties also agree to complete facilitation by May 28, 2020. Finally, the Parties agree that Plaintiff's response to any pending motions for summary shall be filed by June 5, 2020, and any response by Defendants shall be filed by June 19, 2020. The parties further stipulate to adjourn the current oral argument on Defendants Isabella County, Eggers, and Cluley's pending motion for summary judgment to a date to be scheduled by the Court following the briefing schedule outlined above.

Approved for entry:

Dated: March 27, 2020

/s/ Gregory W. Wix

Gregory W. Wix (P65424)

Attorneys for Plaintiff

Dated: March 27, 2020

/s/ Allan C. Vander Laan

Allan C. Vander Laan (P33893)

Attorney for Defendants Isabella County,
Jacob Eggers & Christopher Cluley

Dated: March 27, 2020

/s/ Andrew J. Brege

Andrew J. Brege (P71474)

Attorney for Defendants City of Mt.
Pleasant, Officer Cary Murch & Officer Jeff
Thompson

ORDER

This matter having come before the Court on the stipulation of the Parties,
and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that:

1. The deadline for Defendants to file dispositive motions be extended to May 8, 2020.
2. The deadline to complete facilitation by May 28, 2020.

3. Plaintiff's response to any dispositive motions shall be filed by June 5, 2020.
4. Defendants' reply briefs, in any, shall be filed by June 19, 2020.
5. The current oral argument scheduled for June 16 is adjourned to a date to be set by the Court.

Dated: _____

Hon. Thomas L. Ludington
U.S. District Court Judge